

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Cassandra Luxama	Team: Team # 7	CCRB Case #: 200703193	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 03/02/2007 6:33 PM	Location of Incident: in front of § 87(2)(b) & 48th Precinct	Precinct: 48	18 Mo. SOL 9/2/2008	EO SOL 9/2/2008	
Date/Time CV Reported Tue, 03/06/2007 2:42 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 03/06/2007 2:42 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Anthony Burgos	18252	926617	048 PCT
2. An officer			
3. POM Majer Saleh	31591	929110	048 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Eleodoro Mata	29884	927153	048 PCT
2. POM Juan Rodriguez	24850	924410	048 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Majer Saleh	Abuse: PO Majer Saleh stopped and questioned § 87(2)(b)	§ 87(2)(b)
B.POM Majer Saleh	Abuse: PO Majer Saleh frisked § 87(2)(b)	§ 87(2)(b)
C.POM Majer Saleh	Abuse: PO Majer Saleh searched § 87(2)(b)	§ 87(2)(b)
D.POM Majer Saleh	Force: PO Majer Saleh used physical force against § 87(2)(b)	§ 87(2)(b)
E.POM Majer Saleh	Discourtesy: PO Majer Saleh spoke obscenely and rudely to § 87(2)(b) at § 87(2)(b) and the 48th Precinct.	§ 87(2)(b)
F. An officer	Force: An officer used physical force against § 87(2)(b)	§ 87(2)(b)
G. An officer	Discourtesy: An officer spoke obscenely and rudely to § 87(2)(b)	§ 87(2)(b)
H. An officer	Force: An officer used pepper spray against § 87(2)(b)	§ 87(2)(b)
I.POM Majer Saleh	Force: PO Majer Saleh hit § 87(2)(b) against an inanimate object.	§ 87(2)(b)
J.POM Majer Saleh	Abuse: PO Majer Saleh did not obtain medical treatment for § 87(2)(b) at the 48th Precinct.	§ 87(2)(b)
K.POM Anthony Burgos	Abuse: PO Anthony Burgos did not obtain medical treatment for § 87(2)(b) at the 48th Precinct.	§ 87(2)(b)

Synopsis

On March 2, 2007, at approximately 6:33 p.m., § 87(2)(b) was walking towards his father's apartment complex at § 87(2)(b) in the Bronx. § 87(2)(b) was returning from China Wok, a Chinese restaurant, located on 180th Street in the Bronx. § 87(2)(b) saw his friend, § 87(2)(b) (last name unknown) walking out of a building. § 87(2)(b) approached § 87(2)(b) and they shook hands. Minutes later, a police car parked outside the enclosed area. A male said, "Yo, where are you going?" § 87(2)(b) turned around and observed two police officers, PO Majer Saleh and a female officer, exiting a marked police car. PO Saleh approached § 87(2)(b) and again asked him where he was going. PO Saleh allegedly asked, "Why did you walk off when I pulled up?" PO Saleh stood in front of § 87(2)(b) and asked § 87(2)(b) for his identification (Allegation A). PO Saleh allegedly asked § 87(2)(b) if he had anything in his pocket. PO Saleh then allegedly started patting § 87(2)(b) coat pockets (Allegation B). PO Saleh allegedly searched the inside pockets that were on § 87(2)(b) hooded jacket, and removed two bags of marijuana (Allegation C). § 87(2)(b) tried to run. He ran towards a wheelchair ramp attached to the building. PO Saleh allegedly grabbed § 87(2)(b) by the left side of his shirt and then firmly grabbed § 87(2)(b) around his waist with both arms. PO Saleh allegedly pulled § 87(2)(b) back which caused him to fall backwards. § 87(2)(b) allegedly dropped to his knees, bowed his head, and held his hands over his face as PO Saleh kicked him in the back twice and punched him on the side of his head (Allegation D). § 87(2)(b) stated that PO Saleh said, "Oh, motherfucker, you tried to hit me in my face (Allegation E)." PO Saleh then handcuffed him. Another officer, PO 2, allegedly placed her knee on the back of § 87(2)(b) head (Allegation F). After § 87(2)(b) was handcuffed, he looked up and saw PO Saleh handling his property where § 87(2)(b) had been stopped. A third officer, PO 3, arrived. § 87(2)(b) slightly turned to his right side and asked PO 3, "Why you guys beating me up like this? Ya'll really corny. This is not cool." PO 3 allegedly said, "You think we're corny. This is fucked up? Good, hold that...this is more fucked up" (Allegation G). PO 3 allegedly then pepper sprayed § 87(2)(b) twice (Allegation H). PO Saleh returned and allegedly kicked § 87(2)(b) on the lower right side, near his hip (Allegation D). § 87(2)(b) felt both officers picking him up by the arms and taking him to the police car. Inside the police car, PO Saleh allegedly slammed § 87(2)(b) head twice against the window (Allegation I). PO Saleh then allegedly slammed § 87(2)(b) head against the plexiglass partition more than three times (Allegation I). PO Saleh allegedly also hit § 87(2)(b) twice in the face with his fist (Allegation D). At the precinct, on his way to the cells, § 87(2)(b) shouted that he needed some help. His eyes were burning; he "can't see." PO Saleh allegedly ignored him and said that § 87(2)(b) called him an "asshole" and tried to hit him (Allegation J). § 87(2)(b) allegedly asked PO Anthony Burgos for water, but it was not provided (Allegation K).

§ 87(2)(g)

Summary of Complaint

On March 6, 2007, § 87(2)(b) filed the following complaint over the telephone at the Civilian Complaint Review Board (encl. 4a-b). On March 14, 2007, § 87(2)(b) was interviewed at the Civilian Complaint Review Board (encl. 5a-d). § 87(2)(g)

§ 87(2)(b) in his initial account maintained that an officer busted his lip, he sustained a scrape on his face, and he observed numerous officers on the scene.

On March 2, 2007, at approximately 6:33 p.m., § 87(2)(b) was walking towards his father's apartment complex at § 87(2)(b) in the Bronx. § 87(2)(b) was returning from China Wok, a Chinese restaurant, located on 180th Street, approximately a half a block from his father's building. While inside the restaurant, he did not talk with anyone, nor did he recognize, or speak to anyone prior to reaching his father's apartment complex. § 87(2)(b) father's apartment complex consists of five buildings. Instead of walking towards the main entrance, § 87(2)(b) walked behind the building which is beside four other apartment buildings that form a semi circle. There is a picnic area and daycare center behind these buildings. There was a group of six people standing around. § 87(2)(b) noticed a man known as, § 87(2)(b) (given name unknown) walking in his direction. He shook hands with § 87(2)(b) and the two continued to walk in opposite directions. § 87(2)(b) then saw his friend, § 87(2)(b) (last name unknown) walking out of a building. § 87(2)(b) walked up a group of steps that led to a small walkway with benches leading to the back steps of a building. § 87(2)(b) approached § 87(2)(b) they shook hands and § 87(2)(b) explained that he was going to the store. § 87(2)(b) told him that he was going inside the building. Minutes later, a police car parked outside the enclosed area. A male said, "Yo, where are you going?" § 87(2)(b) turned around and observed two police officers exiting a marked police car. PO Majer Saleh, identified through the investigation, exited the car from the front passenger door while PO 2 (white, female, 5'5", late twenties, long hair and styled in a ponytail, 135lbs) exited through the driver's door. Both men explained where they were going. PO Saleh approached § 87(2)(b) and again asked him where he was going. PO Saleh asked, "Why did you walk off when I pulled up?" § 87(2)(b) had not seen the officers anytime that day. § 87(2)(b) replied that he was not walking from them, but that he was entering the building. § 87(2)(b) stood to § 87(2)(b) left while PO 2 stood in front of § 87(2)(b) PO Saleh stood in front of § 87(2)(b) and asked § 87(2)(b) for his identification. § 87(2)(b) handed him his identification. He then showed the officer keys to the building. PO Saleh replied that he did not care about that. PO Saleh asked § 87(2)(b) if he had anything in his pocket. PO Saleh then started patting § 87(2)(b) coat pockets. PO Saleh told § 87(2)(b) that there was "a lot of stuff going on in the area." § 87(2)(b) stated that "a lot of things go on in a lot of places." PO Saleh then said, "Shut up." PO Saleh then searched § 87(2)(b) pockets.

§ 87(2)(b) wore a black sports hat, black and white team jacket with a hooded jacket underneath, and a pair of blue jeans. PO Saleh searched two of the exterior pockets on § 87(2)(b) jacket. PO Saleh removed a GameBoy from his jacket pocket. PO Saleh searched § 87(2)(b) two front pants' pockets. PO Saleh then searched the inside pockets that were on § 87(2)(b) hooded jacket, and removed two bags of marijuana. § 87(2)(b) tried to run. He ran towards a wheelchair ramp attached to the building. PO Saleh grabbed § 87(2)(b) by the left side of his shirt and firmly grabbed § 87(2)(b) around his waist with both arms. PO Saleh pulled § 87(2)(b) back which caused him to fall backwards. § 87(2)(b) sustained no injuries as a result of this fall. § 87(2)(b) dropped to his knees, bowed his head, and held his hands over his face as PO Saleh kicked him in the back twice and punched him on the side of his head. PO Saleh said, "Oh, motherfucker, you tried to hit me in my face." § 87(2)(b) stated that he did not hit PO Saleh. PO Saleh then handcuffed him. PO 2 placed her knee on the back of § 87(2)(b) head.

After § 87(2)(b) was handcuffed, he looked up and saw PO Saleh handling his property (keys, lip balm, product for his eyes, and his identification) where § 87(2)(b) had been stopped. A third officer, PO 3 (white, male, short dark hair, 145lbs, mid twenties, wore a uniform), arrived. § 87(2)(b) did not describe how he came to be on the scene. § 87(2)(b) slightly turned to his right side and asked PO 3, "Why you guys beating me up like this? Ya'll really corny. This is not cool." PO 3 said, "You think we're corny. This is fucked up? Good, hold that...this is more fucked up." PO 3 then pepper sprayed § 87(2)(b) twice. § 87(2)(b) stated that he was not moving his body around, nor did he say anything else to PO3. § 87(2)(b) stated that PO 2 was not standing near him. PO Saleh returned and kicked § 87(2)(b) on the lower right side, near his hip. § 87(2)(b) did not sustain any injuries as a result of being kicked. PO 3 said, "Oh man, I pepper sprayed him." PO Saleh then reached inside § 87(2)(b) right pocket and removed his wallet and cell phone. § 87(2)(b) determined that PO Saleh was interacting with him because he recognized his voice; he did not see his face. PO Saleh told PO 3 not to worry about pepper spraying § 87(2)(b) § 87(2)(b) felt both officers picking him up by the arms and taking him to the police car. § 87(2)(b) repeatedly asked the officers why they beat him down and from voice recognition he heard PO Saleh say, "You want to be a tough guy?" § 87(2)(b) was placed on the left side of the back seat. § 87(2)(b) attempted to place his head against the car's window, but PO Saleh slammed § 87(2)(b) head twice against the window. § 87(2)(b) was trying to position his body so that PO Saleh could not hit his face. § 87(2)(b) told PO Saleh that he

was an “asshole.” Based on voice recognition, § 87(2)(b) determined that PO Saleh was seated next to him because PO Saleh replied, “Oh motherfucker, I’m going to fuck you up now. You know you are mine. You tried to run.” PO Saleh then slammed § 87(2)(b) head against the plexiglass partition more than three times. § 87(2)(b) asked PO Saleh why he was beating him up. PO Saleh told § 87(2)(b) to “Shut the fuck up.” PO Saleh hit § 87(2)(b) twice in the face with his fist. § 87(2)(b) was taken to the 48th Pct. At the precinct, PO Saleh pushed § 87(2)(b) handcuffed hands up across his back to cause him pain. PO Saleh told § 87(2)(b) to “Shut up and stop crying like a little bitch.” However, § 87(2)(b) was not speaking with PO Saleh. § 87(2)(b) did not complain to PO Saleh about the way he pushed his handcuffs.

§ 87(2)(b) was not taken to the desk sergeant. § 87(2)(b) was immediately taken to the cells. On his way to the cells, § 87(2)(b) shouted that he needed some help. His eyes were burning; he “can’t see.” PO Saleh ignored him and said that § 87(2)(b) called him an “asshole” and tried to hit him. § 87(2)(b) stated that he did not hit PO Saleh. An individual said, “Just put him in there.” § 87(2)(b) was placed inside a cell. He was not given water to wash his eyes. § 87(2)(b) questioned why he could not have a cup of water and another officer said, “Wait on your arresting officer.” § 87(2)(b) could not describe this officer. § 87(2)(b) was taken out of the cell for fingerprinting. § 87(2)(b) asked an officer, identified through the investigation as PO Anthony Burgos, for water, but it was not provided. PO Burgos instructed § 87(2)(b) not to rub his eyes. After PO Burgos completed § 87(2)(b) fingerprinting, he placed § 87(2)(b) back in the cell and § 87(2)(b) went to sleep. § 87(2)(b) was eventually taken to Central Booking. He was charged with resisting arrest, assault, and possession of marijuana. § 87(2)(b) has been previously arrested in the area, but he had not interacted with these officers. On March 12, 2007, § 87(2)(b) spoke with § 87(2)(b). § 87(2)(b) told § 87(2)(b) that he was searched and his mother filed a complaint at the 48th Precinct against these officers. § 87(2)(b) did not witness § 87(2)(b) being searched. § 87(2)(b) did not explain where he was searched. § 87(2)(b) was unable to provide additional information.

Note: § 87(2)(b) shirt and jeans were torn as a result of his interaction with the police officers. § 87(2)(b) sustained bruises and scratches to his head and his knees. § 87(2)(b) did not appear with these photos. § 87(2)(b) had a bruise on his back. § 87(2)(b) photographed his injuries with his camera phone. § 87(2)(b) did not obtain medical treatment. § 87(2)(b) provided photo documentation of a black T-shirt with the collar torn on the left side. § 87(2)(b) maintained that the shirt was torn as a result of his interaction with PO Saleh. § 87(2)(b) did not account for the specific action that resulted in its being torn. On March 14, 2007, § 87(2)(b) sent the investigator an email of a dark photo where nothing was visible. On March 20, 2007, the investigator contacted § 87(2)(b) and explained that the photo he sent was dark and the investigator could not lighten the photo. § 87(2)(b) was asked if he had documented his injuries with another camera and he stated, “No”.

§ 87(2)(b) provided the following description of the subject officers:

PO Majer Saleh: white or Hispanic, male, 165lbs, early twenties

PO 2: white, female, 5’5”, late twenties, long hair and styled in a ponytail, 135lbs,

PO 3: white, male, short dark hair, 145lbs, mid twenties, wore a uniform

Arrest Photo (encl. 6a)

§ 87(2)(b) had a small bruise on the right side of his forehead. No additional injuries were on his face.

Results of Investigation

Photo Array

§ 87(2)(g) § 87(2)(b) indicated that the officer who pepper sprayed him had arrived on the scene sometime during his interaction with PO Saleh. § 87(2)(b) reported that numerous officers later arrived at the location. PO Saleh confirmed that he transmitted an officer needed assistance call over the police radio and he could not account for the officers who responded. The SPRINT report did not reflect all the units that responded to this call; the subject officer could have been from any unit. The officer assigned to the sector that responded to this incident, and the officers interviewed did not match § 87(2)(b) physical description of the subject officer based on race, age, or weight. § 87(2)(b) described the subject officer as a white male in his mid-twenties. However, the officers interviewed were Hispanic, in their mid to late thirties and their weights were twenty

five to eighty five pounds over § 87(2)(b) description. None of the officers interviewed were able to account for the officers who were on the scene.

The 48th Precinct was contacted on February 26, 2008, in order to obtain PO Saleh's assignment and determine the identities of his partner, but roll call had no record of PO Saleh's assignment. § 87(2)(g)

§ 87(2)(g) Sgt. Fleming confirmed that PO Saleh was assigned to an impact team assigned to a van, but the list of officers assigned to the van had not been created because officers assigned to the van change during the tour. Sgt. Fleming did not have documentation that could have been forwarded to the investigator. The roll call listed a field training unit assigned to various posts, but the list was not found of officers assigned to impact. PO Saleh did not recall the names of his partners.

Attempts to Contact § 87(2)(b)

Telephone calls were made to § 87(2)(b)'s home on April 3, 2007, April 5, 2007, April 20, 2007, April 23, 2007, April 27, 2007, and May 9, 2007. During these calls § 87(2)(b)'s telephone was busy. The investigator contacted § 87(2)(b) about this problem on April 5, 2007 and he provided the telephone number to § 87(2)(b)'s sister, § 87(2)(b) (last name unknown). Telephone calls were made to § 87(2)(b) (last name unknown) on April 20, 2007, April 27, 2007, and May 9, 2007; § 87(2)(b) telephone number was disconnected. On April 27, 2007, and May 9, 2007, messages were left for § 87(2)(b) explaining that the investigator could not reach § 87(2)(b) but § 87(2)(b) did not return the investigator's calls.

On May 5, 2007, a stop & frisk report was requested for § 87(2)(b) but no reports were found. No reports of individuals with similar last names were found in the log. A LexisNexis search for § 87(2)(b) and § 87(2)(b) produced over five hundred results.

Officer Identification

§ 87(2)(b) was unable to identify the subject officers. § 87(2)(g) PO Juan Rodriguez and PO Serio were assigned to Sector C; the sector of this incident. PO Joseph Serio retired on June 12, 2007, so his statement was not obtained, but PO Juan Rodriguez was interviewed and accounted for his assignment on the day in question. PO Anthony Burgos, § 87(2)(b) arresting officer, and his partner PO Eleodora Mata were interviewed and provided the names of the additional officers who were on the scene. The additional officers, PO Majer Saleh and PO Juan Rodriguez, explained their roles in this incident at the time of their interviews.

PO Eleodora Mata's Statement

Memo Book: At 1830 hours, PO Eleodora Mata arrived at § 87(2)(b) At 1833 hours, one individual was arrested. At 1840 hours, arrived at the precinct for arrest processing (encl. 7a-b).

On September 19, 2007, Eleodora Mata was interviewed at the Civilian Complaint Review Board (encl. 8a-b).

On March 2, 2007, PO Eleodora Mata worked a tour of 1500 X 2335 in Sector B with PO Anthony Burgos. An officer at § 87(2)(b) requested assistance. PO Mata did not recall who requested the assistance of additional units. PO Mata responded to the location. When PO Mata arrived, § 87(2)(b) had already been handcuffed. There were several police cars on the scene; he did not recall the exact amount. The cars were all marked. There were a couple of officers escorting § 87(2)(b) out of a courtyard. PO Mata did not recall the exact number of officers, or their names, but he recalled PO Majer Saleh being present. He did not state that there were additional civilians interacting with the officers. Since the incident occurred in PO Mata's and PO Burgos' sector, PO Burgos volunteered to take the arrest; none of the other officers wanted to process the arrest. § 87(2)(b) did not have any visible injuries. PO Mata believed that he was told why § 87(2)(b) was stopped, but he did not recall. He said it was probably because they wanted to speak to § 87(2)(b) He only learned that § 87(2)(b) attempted to flee. He could not provide additional information regarding this or the officer who relayed this information.

PO Mata did not frisk, nor search § 87(2)(b) PO Mata did not observe any police officers frisk or search § 87(2)(b) PO Mata did not kick § 87(2)(b) pepper spray him, nor curse at him. PO Mata did not witness any officers use physical force against § 87(2)(b) nor curse at § 87(2)(b) § 87(2)(b) did not complain of any pain or injury. § 87(2)(b) did not speak directly to PO Mata. § 87(2)(b) did not have watery eyes, or any eye irritation that would indicate that he had been pepper sprayed. § 87(2)(b) appeared fine; he seemed like he was out of breath or tired. PO Mata believed that it was because § 87(2)(b) ran away from the officers. § 87(2)(b) was not upset.

PO Mata did not recall if he and PO Burgos transported § 87(2)(b) to the precinct. There were several marked police cars at the location. PO Mata stated that when he rode back to the precinct, he was the recorder in the front passenger seat. PO Mata stated that an officer would have ridden in the backseat with § 87(2)(b) if there was not a cage dividing the front and back passenger seats. However, there was a cage in his patrol car. PO Mata was unaware of whether § 87(2)(b) face was hit on the plexiglass inside the police car. PO Mata remembered being at the precinct with § 87(2)(b) At the precinct, § 87(2)(b) was presented to the desk sergeant and he was searched in front of the desk. PO Mata did not recall if § 87(2)(b) requested medical treatment. If he had any complaints, it would have been directed to the officer processing his arrest.

PO Juan Rodriguez's Statement

Memo Book: no entries pertaining to this incident (encl. 9a-c).

On October 31, 2007, PO Juan Rodriguez was interviewed at the Civilian Complaint Review Board (encl. 10a-b).

On March 2, 2007, PO Juan Rodriguez worked a tour of 1600X 2300 in Sector C with PO Serio. PO Rodriguez did not have an independent recollection of this incident. He did not respond to any calls at § 87(2)(b) PO Rodriguez reviewed a photograph of § 87(2)(b) and maintained that he did not recognize him. PO Rodriguez had no recollection of assisting any officers on the day in question with an arrest. PO Rodriguez reviewed the SPRINT report. PO Rodriguez confirmed that his sector responded to the location in question. PO Rodriguez did not recall working with PO Anthony Burgos.

PO Majer Saleh's Statement

Memo Book: At 1815 hours, two males stopped opposite 2105 Monterey. At 1833 hours, one individual was arrested (encl. 11a-b).

On October 24, 2007 PO Majer Saleh was interviewed at the Civilian Complaint Review Board (encl. 12a-b).

On March 2, 2007, PO Majer Saleh worked a tour of 1535 X 2055 on an impact overtime assignment which consisted of issuing summonses. PO Saleh worked with three officers whose names he did not recall. PO Saleh does not usually work with these officers. These officers were assigned to a marked car. PO Saleh was driving in the vicinity of § 87(2)(b) when he observed § 87(2)(b) sitting on the steps of a building drinking out of a brown bag. PO Saleh decided to approach him. § 87(2)(b) was sitting in front of a housing building and PO Saleh wanted to know what he was doing. Housing residents are only allowed on the premises. § 87(2)(b) upon noticing PO Saleh's interest in him, got up and walked away leaving the brown bag behind. PO Saleh walked to the steps, looked inside the bag, and noticed a can of beer. PO Saleh approached § 87(2)(b) requesting his identification and address. § 87(2)(b) turned and pointed saying, "Over there." PO Saleh asked him where because he had not pointed to any place in particular. § 87(2)(b) again stated, "Over there." PO Saleh asked for identification, which § 87(2)(b) stated that he did not have. PO Saleh decided to frisk § 87(2)(b) because he had a "nervous look." PO Saleh did not indicate that his safety was in jeopardy or felt that § 87(2)(b) was armed.

PO Saleh instructed him that he would be frisked to ensure the officers' safety. PO Saleh denied a discussion about what § 87(2)(b) had in his pockets. He did not recall having any additional conversations with § 87(2)(b) PO Saleh frisked one side of § 87(2)(b) body; when PO Saleh moved to frisk the opposite side of § 87(2)(b) body, § 87(2)(b) eyes opened. § 87(2)(b) swung twice in an attempt to punch

PO Saleh, but § 87(2)(b) did not make contact. PO Saleh grabbed § 87(2)(b) arm to stop him. § 87(2)(b) was “bouncing around” to get out of the jacket he was wearing and in the process throwing things out of his pocket. § 87(2)(b) went to a nearby ramp. PO Saleh held onto one of his arms, while trying to handcuff him. PO Saleh said that he was initially alone, but additional officers were later around him, but he could not recall their names, nor did he indicate when they arrived. PO Saleh transmitted a request to have additional officers on the scene, but he did not recall who responded, or the amount of officers. PO Saleh stated that neither he, nor any other officers kicked § 87(2)(b) in the back or punched him on any areas of his body. He did not state that § 87(2)(b) was on the ground. PO Saleh was shown a photo of § 87(2)(b) in order to account for the bruise on § 87(2)(b) forehead, but PO Saleh maintained that he was not sure the male in the photo was § 87(2)(b). PO Saleh stated that he did not curse at § 87(2)(b). PO Saleh stated that he did not pepper spray § 87(2)(b). He did not recall if another officer pepper sprayed him. He did not witness any officers with their pepper spray in hand. § 87(2)(b) did not complain of officers’ pepper spraying him. PO Saleh did not recall § 87(2)(b) calling him “corny” or if he cursed at the officers on the scene. He did not witness officers cursing at § 87(2)(b). After handcuffing § 87(2)(b) PO Saleh gathered three bags of marijuana which § 87(2)(b) discarded during their struggle. PO Saleh did not delay in transporting § 87(2)(b) to the precinct because he was in a hostile area. PO Saleh placed § 87(2)(b) in the back of the police car; he sat next to him, and two officers whose names he could not provide were seated in the front driver and passenger seats. No other officers were seated in the back seat. While in the car, § 87(2)(b) fidgeted and repeatedly questioned why he had been arrested. PO Saleh denied using force against § 87(2)(b) at this juncture; he did not complain about § 87(2)(b) attempting to flee and did not curse at him. At the precinct, § 87(2)(b) was presented to the desk sergeant and afterwards PO Saleh escorted him to the prisoner cells. PO Saleh returned to patrol and had no further interaction with § 87(2)(b). He did not state that § 87(2)(b) requested medical attention.

PO Saleh confirmed that § 87(2)(b) was with a male when he was stopped, but the male walked away when PO Saleh was struggling with § 87(2)(b). PO Saleh did not recall the other male being searched, or any interactions the officers had with him. § 87(2)(b) was the only individual drinking beer. PO Saleh stated that he did not question § 87(2)(b) about items that were in his pocket.

PO Anthony Burgos’ Statement

Arrest Report (encl. 13a-b)

On March 2, 2007, § 87(2)(b) was arrested for § 87(2)(b). § 87(2)(b) swung at an officer with the intention of causing injury. § 87(2)(b) also ran in an attempt to escape and prevent his arrest. Two zip lock bags of alleged marijuana were found on him.

Memo Book: At 1825 hours, PO Burgos responded to an 85 at § 87(2)(b). At 1833 hours, one individual was arrested. At 2035 hours, end of tour (encl. 14a-c).

On January 23, 2008, PO Anthony Burgos was interviewed at the Civilian Complaint Review Board (encl. 15a-b).

On March 2, 2007, PO Anthony Burgos worked a tour of 4:00p.m. to 12:00 a.m. in sector B with PO Eleodoro Mata. PO Burgos responded to an officer needing assistance at East 2105 Monterey Avenue. There were approximately six marked cars at the location. When PO Burgos arrived at the location, § 87(2)(b) had already been handcuffed. PO Burgos did not witness any other civilians on the scene interacting with the officers. PO Burgos did not recall the officers who were interacting with § 87(2)(b). PO Saleh, who had already been on the scene, stated that § 87(2)(b) ran from the officers. § 87(2)(b) also took a “swing” at one of the officers. PO Burgos did not recall the officer § 87(2)(b) attempted to strike. PO Burgos was not told if any force was used in apprehending § 87(2)(b). § 87(2)(b) physical condition was normal, but it was apparent that he had been pepper sprayed based on the expression on his face. § 87(2)(b) complained that he had been pepper sprayed. PO Burgos did not ask who pepper sprayed § 87(2)(b) nor did § 87(2)(b) provide that information. § 87(2)(b) did not complain that officers used force against him. PO Burgos reviewed § 87(2)(b) arrest photo and attributed the visible bruise on § 87(2)(b) forehead to his own doing. PO Burgos stated that § 87(2)(b) got the bruise from falling when he resisted his arrest. PO Burgos stated that he determined § 87(2)(b) fell because § 87(2)(b) was on the ground when he arrived on the scene; § 87(2)(b) was laying face down on the ground. PO Burgos was specifically asked

how § 87(2)(b) fell and he repeated that officers on the scene told him that they had to struggle to get § 87(2)(b) on the ground to then apply the handcuffs. He did not recall the names of these officers. The officers did not specifically describe this fall. PO Burgos stated PO Saleh had a female partner and there were no other female officers on the scene. He did not recall her name.

PO Burgos and PO Mata drove § 87(2)(b) to the precinct. PO Mata was seated in the front passenger seat; there were no additional officers in the car. PO Burgos stated that no force was used against § 87(2)(b) in the police car. There was no dialogue between the officers and § 87(2)(b). At the precinct, PO Burgos held § 87(2)(b) handcuffs while escorting him to the precinct. During that time, he did not curse at § 87(2)(b) nor did his partner. He did not raise § 87(2)(b) handcuffs across his back to cause him pain. Inside the precinct, PO Burgos completed § 87(2)(b) pedigree information and then escorted § 87(2)(b) to the bathroom where he was allowed to wash his eyes. § 87(2)(b) did not request medical attention. He did not state that § 87(2)(b) requested medical treatment. PO Burgos stated that he, nor his partner cursed, used physical force, nor threatened to use force against § 87(2)(b). PO Burgos did not witness any of the officers on the scene engage in any of the aforementioned misconduct.

Additional Officer Statements

§ 87(2)(g)

Police Documents

Command Log (encl. 18a)

On March 2, 2007, § 87(2)(b) was arrested for § 87(2)(b) at § 87(2)(b) in the Bronx. § 87(2)(b) condition was described as normal.

Roll Call (encl. 17a-q)

On March 2, 2007, PO Juan Rodriguez and PO Joseph Serio were assigned to Sector C. PO Eleodora Mata and PO Anthony Burgos worked as partners in Sector B. PO Majer Saleh was not noted in the roll call.

Stop & Frisk Log (encl. 19a)

No reports were prepared for § 87(2)(b) (last name unknown)

SPRINT Report (encl. 16a-b)

On March 2, 2007, at approximately 6:27p.m., an officer assigned to a vehicle with an open designation requested additional units at 180th Street and Monterey Avenue in the Bronx. Sector C and a patrol supervisor responded to the call. One individual was arrested.

Arrest Outcome

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Complainant/Victim Criminal Conviction History

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian CCRB History

§ 87(2)(b) has no prior complaints (encl. 3a).

Police Officer CCRB History

On October 7, 2004, the board substantiated allegations that PO Anthony Burgos punched, kicked, and spoke discourteously to an individual who fled when his arrest was being affected. The board recommended charges; however, DCT found PO Burgos not guilty (encl. 1a).

PO Majer Saleh has no prior complaints (encl. 2a).

Conclusions and Recommendations

Disputed/Undisputed Fact

It is undisputed that PO Saleh frisked § 87(2)(b). It is undisputed that § 87(2)(b) attempted to flee during his interaction with PO Saleh. It is undisputed that § 87(2)(b) had marijuana in his possession and was subsequently arrested for § 87(2)(b).

§ 87(2)(g)

Assessment of Evidence

On March 2, 2007, § 87(2)(b) alleged that while talking to his friend § 87(2)(b) (last name unknown) in the courtyard of his father's apartment building, PO Majer Saleh approached him requesting identification, questioned him about the contents in his pockets, subsequently frisked, and then searched him. PO Saleh maintained that § 87(2)(b) was drinking beer and upon seeing him, § 87(2)(b) walked away abandoning the alcohol on the stairs. § 87(2)(b) denied walking away, but confirmed being near the stairs, and PO Saleh remarking on his walking away. § 87(2)(g)

§ 87(2)(b) was not charged with the open container violation, nor was a container of alcohol taken into evidence when § 87(2)(b) was subsequently arrested. No notations are found in the arrest report summary, nor the command log regarding § 87(2)(b) public drinking. Neither did PO Saleh's memo book reflect such an occurrence. The arrest report indicated that § 87(2)(b) had resisted his arrest, attempted to assault an officer, and was found in possession of marijuana. § 87(2)(g)

§ 87(2)(b) maintained that PO Saleh searched him and then falsely accused him of attempting to assault an officer. PO Saleh testified to partially frisking § 87(2)(b) however, midway through the frisk, § 87(2)(b) made two failed attempts to punch him, fled, and discarded marijuana from his pockets. § 87(2)(b) acknowledged he tried to escape; however, he maintained the marijuana was removed during his search. PO Saleh stated that § 87(2)(b) nervous behavior made him conduct a frisk, but he did not articulate what, if anything, made him feel his safety was in danger. § 87(2)(g)

§ 87(2)(b) admitted to PO Saleh retrieving his property after he was handcuffed, but did not give an explanation of how the property came to be at that location, neither did he rest the blame on PO Saleh. § 87(2)(g)

§ 87(2)(b) alleged that after he was apprehended, PO Saleh grabbed him by the left side of his shirt, pulled him to the ground, kicked him multiple times, and punched him on the side of his head while said, "Oh, motherfucker, you tried to hit me in my face." Afterwards, another officer arrived and pepper sprayed him. § 87(2)(b) further alleged that while en route to the precinct, PO Saleh used additional force in the back seat of the police car; PO Saleh hit his head against a window and on the plexiglass numerous times and cursed at him. PO Saleh testified that § 87(2)(b) was not on the ground, defined his condition as well, and denied that § 87(2)(b) had been pepper sprayed. PO Burgos testified to § 87(2)(b) being on the ground; he was visibly pepper sprayed, and he complained about it. § 87(2)(g)

§ 87(2)(g) PO Mata was unsure of transporting § 87(2)(b) to the precinct. However, he acknowledged being at the desk with him. PO Burgos attested to transporting § 87(2)(b). However, PO Burgos denied PO Saleh being in the back seat. PO Saleh confirmed that he was seated in the backseat of the car with § 87(2)(b) § 87(2)(g)

§ 87(2)(b) alleged that he sustained bruises and scratches to his face and knees, but he did not provide usable photo documentation of these injuries. § 87(2)(b) provided photo documentation of a T-shirt that was torn as a result of his interaction with PO Saleh, § 87(2)(g)

§ 87(2)(b) testified that he had been wearing a jacket and a sweatshirt beneath his jacket; it is unclear how the T-shirt was torn when he did not account for wearing it. § 87(2)(g)

His arrest photo reflected he had worn a sweatshirt. In § 87(2)(b) initial report, he alleged sustaining a busted lip and scratches and bruises to his face. He later testified that it was scratches and bruises to his head and knees. However, his arrest report photo showed no indication of these injuries; § 87(2)(b) had a slight redness to his forehead and the remainder of his face was not indicative of the force he described. § 87(2)(g)

None of the interviewed officers were able to identify the additional officers who were on the scene and involved in pepper spraying § 87(2)(b). The roll call and SPRINT report did not assist in identifying the additional officers. § 87(2)(g)

§ 87(2)(b) alleged that PO Saleh and PO Burgos failed to provide water for his eyes. PO Burgos alleged that he provided the water for § 87(2)(b) to wash his eyes. § 87(2)(g)

Allegations Not Pleaded

§ 87(2)(g)

§ 87(2)(g)

Allegation A: PO Majer Saleh stopped and questioned § 87(2)(b)

§ 87(2)(b) alleged that PO Saleh stopped and questioned him without cause. PO Saleh maintained that § 87(2)(b) was drinking beer in public and he was stopped for that violation. There were no police documents to support PO Saleh's assertion and no officers were able to corroborate PO Saleh's testimony. § 87(2)(g)

Allegation B: PO Majer Saleh frisked § 87(2)(b)

Allegation C: PO Majer Saleh searched § 87(2)(b)

§ 87(2)(b) alleged that PO Saleh searched and recovered marijuana from his pockets. PO Saleh maintained that § 87(2)(b) was frisked because of his nervous behavior, but he did not specifically articulate whether § 87(2)(b) actions made him fearful for his safety. § 87(2)(g)

PO Saleh maintained that before completing the frisk, § 87(2)(b) made two failed attempts to punch him, ran away and discarded marijuana. § 87(2)(b) maintained that he ran from PO Saleh and afterwards he was handcuffed; PO Saleh recovered § 87(2)(b) property that was on the ground. § 87(2)(b) did not explain why the property was at the location. § 87(2)(g)

Allegation D: PO Majer Saleh used physical force against § 87(2)(b)

Allegation E: PO Majer Saleh spoke obscenely and rudely to § 87(2)(b) at § 87(2)(b) and the 48th Precinct.

Allegation F: An officer used physical force against § 87(2)(b)

Allegation I: PO Majer Saleh hit § 87(2)(b) against an inanimate object.

§ 87(2)(b) alleged that after he was apprehended, PO Saleh grabbed him by the left side of his shirt, pulled him to the ground, kicked him multiple times, and punched him on the side of his head while saying, “Oh, motherfucker, you tried to hit me in my face.” A female officer placed her knee on his head. Furthermore, while en route to the precinct, PO Saleh punched him twice in the face, hit his head against a window and numerous times against the plexiglass partition. § 87(2)(b) initially alleged that he sustained a busted lip; he later stated that he had numerous scratches to his face without mentioning the busted lip. His arrest photo did not reflect the injuries he alleged. However, the photo showed a bruise to his head which indicated that force was used against him. PO Saleh denied the alleged force and discourteous statement. The additional officers did not witness § 87(2)(b) interaction with the officers and therefore could not account for what transpired. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Allegation G: An officer spoke obscenely and rudely to § 87(2)(b)

Allegation H: An officer used pepper spray against § 87(2)(b)

§ 87(2)(b) stated that an officer pepper sprayed him. PO Burgos testified that when he arrived on the scene, § 87(2)(b) had visible signs of having been pepper sprayed and he complained of it. PO Burgos did not learn why, nor who pepper sprayed § 87(2)(b) § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b) indicated that there were numerous officers on the scene and the additional officers who were interviewed corroborated that account. PO Saleh requested additional units. The SPRINT report confirmed his request, but all the units that responded were not properly noted. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation J: PO Majer Saleh did not obtain medical treatment for § 87(2)(b) at the 48th Precinct.

Allegation K: PO Anthony Burgos did not obtain medical treatment for § 87(2)(b) at the 48th Precinct.

§ 87(2)(b) alleged that he was pepper sprayed and PO Saleh and PO Burgos refused to give him water to wash his eyes. § 87(2)(g) PO Burgos corroborated that § 87(2)(b) was pepper sprayed and he stated that he gave him water to wash his eyes at the precinct. § 87(2)(g)

§ 87(2)(b)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: